

No. 1-12-2293

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

| | | |
|--|---|-------------------------------|
| CAROL STUDIOS, INC., |) | Appeal from the Circuit Court |
| |) | of Cook County |
| Plaintiff-Appellant, |) | |
| |) | |
| v. |) | |
| |) | |
| DOO YOUNG HONG, an individual and a representative |) | |
| of DY PROPERTIES, LLC; YANK SIK HONG, an |) | No. 06 L 13581 |
| individual and a representative of DY PROPERTIES, |) | |
| LLC; DY PROPERTIES, LLC, an Illinois limited liability |) | |
| company; PRINMAR CORPORATION, an Illinois |) | |
| Corporation; GUY CUMMINS, an individual and a |) | |
| representative of Prinmar Corporation; and SARFATTY |) | |
| ASSOCIATES, LTD., an Illinois Corporation |) | Honorable |
| |) | Joan E. Powell, |
| Defendants-Appellees. |) | Judge Presiding. |

JUSTICE PALMER delivered the judgment of the court.
Presiding Justice Gordon and Justice McBride concurred in the judgment.

ORDER

¶ 1 Held: The trial court's order dismissing certain counts of plaintiff's fifth amended complaint with prejudice was affirmed where those counts failed to state a legal cause of action. The court's order dismissing plaintiff's sixth amended complaint with prejudice was reversed.

¶ 2 This lawsuit arises out of the alleged breach of a contract pursuant to which plaintiff, Carol Studios Inc. (CSI), was to provide space planning and interior decoration as part of a project for the construction of a multi-use building (the project) located in Skokie, Illinois. The owners and developers of the project were defendants Doo Young Hong and Young Sik Hong, who later formed defendant DY Properties (collectively, "the Hongs") to develop the project. Defendant Prinmar was hired by the Hongs as the general contractor for the project and defendant Sarfatty Associates (Sarfatty) was hired by the Hongs to provide architectural services for the project. Defendant Guy Cummins was at all relevant times an employee of Prinmar. We refer to the defendants involved in this appeal, Prinmar, Sarfatty and Cummins as the "Construction Defendants."

¶ 3 CSI filed a fifth amended complaint against the Hongs asserting various claims based upon the Hongs alleged breach of their contract with CSI. The fifth amended complaint also asserted claims against the Construction Defendants essentially alleging that they made various misrepresentations to the Hongs that induced the Hongs to breach their contract with CSI and to retain Sarfatty and Prinmar as the architect and general contractor for the project. The trial court dismissed all counts of the fifth amended complaint against the Construction Defendants pursuant to section 2-615 of the Illinois Code of Civil Procedure (the Code) (735 ILCS 5/2-615 (West 2010)).¹ Some of those counts were dismissed with prejudice and others were dismissed without prejudice. CSI then filed a sixth amended complaint reasserting the counts that had been

¹The counts addressed to the Hongs (Counts I, II, VI, VII) are not a subject of this appeal and the Hongs therefore are not parties to this appeal.

dismissed from the fifth amended complaint without prejudice. The trial court dismissed the sixth amended complaint with prejudice pursuant to section 2-603 of the Code. CSI now appeals both of these dismissals. For the reasons that follow, we affirm in part, reverse in part and remand the cause to the trial court.

¶ 4 On February 24, 2011, CSI filed a fifth amended complaint against the Hongs, Prinmar, Sarfatty and Cummins. The complaint alleged the following facts as common to all counts.

¶ 5 The Hongs secured the rights to a single-story building at some point in 2003. The Hongs intended to refurbish the existing structure into a single-story commercial building. In the fall of 2003, the Hongs retained Sarfatty to provide architectural services related to development of the commercial building. The Hongs were later told by the Village of Skokie that the existing structure was unstable and that the project would require demolition of the existing structure. The Village told the Hongs that the new structure could be developed into a larger, multi-story and multi-use structure and the Hongs embraced the idea. This new structure was to include residential units and commercial storefronts. The Hongs included Sarfatty in this expanded assignment. However, Sarfatty did not inform the Hongs that it had no experience designing these type of multi-use buildings. Sarfatty prepared a floor plan for the project with a proposed interior layout and design for public areas, mechanicals and unit layouts. In early 2004, the Hongs began consulting with CSI on the design of the buildings interior and exterior. Throughout 2004, CSI performed various assignments for the project that were later memorialized in a contract between the Hongs and CSI on November 30, 2004. The contract set forth the terms and conditions for all assignments performed or to be performed by CSI for the

Hongs and set forth an hourly fee for time spent by CSI on "design and selection." CSI had begun or completed a majority of those assignments prior to November 30, 2004.

¶ 6 At some point before December 12, 2004, CSI was provided a single floor plan of Sarfatty's architectural plan for the project which reflected Sarfatty's proposed interior layout and design. CSI reviewed this plan and identified numerous flaws that created additional liability for the Hongs and CSI and that were inconsistent with guidelines set forth by various industry design groups. At the Hong's request, CSI assembled these initial concerns in a "punch list." The Hongs asked CSI to produce a comparison drawing of the interior of one of the units in the project that reflected design and layout improvements. CSI did so and provided that drawing to the Hongs. The Hongs showed the drawing to officials from Amcore Bank, the Hong's construction lender, and based upon the bank's positive response, Hong asked CSI to redraw the layouts of the remaining units in the project. For redrawing all units, CSI informed the Hongs that the footprint and placement of the stairwells would be maintained as set forth in Sarfatty's plans but that the placement of mechanicals, windows and walls would be consistent with CSI's comparison drawing. The Hongs accepted and asked CSI to also redraw the non-residential first floor plans. Sometime in late 2004, Sarfatty told the Hongs that the liability, building code and industry standard concerns raised by CSI were purely aesthetic and not a potential source of additional liability.

¶ 7 Beginning in the winter or spring of 2005, the Hongs began to search for a general contractor to undertake construction on the project. At some point before April 25, 2005, the Hongs and Sarfatty sent invitations to various general contractors inviting them to bid on the

project. The prospective bidders included defendant Prinmar. Prior to April 28, 2005, Prinmar obtained details about the bids submitted by other general contractors. Sarfatty and Prinmar had a phone conversation on April 28 during which Sarfatty informed Prinmar of details of the competitive bids submitted by other general contractors. These details included the bid amount that needed to be matched or beaten. On or about that same date, Sarfatty told Prinmar which general contractor was Prinmar's principal rival. Sarfatty also told Prinmar that it would recommend to the Hongs that Prinmar be hired as the general contractor on the project.

¶ 8 On May 6, 2005, Prinmar and another general contractor submitted their bids to be the general contractor for the project. Prinmar's bid was \$55,000 less than the next lowest bid and was altered from Prinmar's initial prospective bid based upon knowledge that Prinmar obtained about the bids submitted by other bidders. Sarfatty recommended that the Hongs retain Prinmar as the general contractor. On July 29, 2005, Prinmar entered into a contract with the Hongs to undertake a cost analysis to be used for obtaining bank financing for the project.

¶ 9 Both Sarfatty and Prinmar had limited to no experience designing or building multi-story, multi-usage buildings before they were retained by the Hongs. On or about August 29, 2005, Hong retained CSI to search for an architect to replace Sarfatty as chief architect on the project. The Village of Skokie told CSI that the architect could be changed without greatly affecting the project. Between August 29 and October 12, 2005, CSI researched and identified several architects with sufficient experience who could replace Sarfatty. These alternatives also had qualifications suitable for approval by the Village of Skokie.

¶ 10 On September 21, 2005, Prinmar met with CSI and the Hongs and their agents.² Prinmar represented that it could obtain the same products identified by CSI at a lower cost, that Cummins had experience overseeing the construction of buildings similar to the project, that Sarfatty was no longer willing to work with CSI and would only work with Prinmar and that Amcore Bank wanted Prinmar to be appointed general contractor. During this meeting, Prinmar also told the Hongs that it was qualified to perform the same design work for which the Hongs had contracted with CSI and that Amcore bank would only work with Prinmar. At this meeting, CSI informed Prinmar that CSI's plans were its property, after which Prinmar agreed to retrieve the CSI plans from Sarfatty.

¶ 11 CSI, the Hongs and Prinmar held a meeting on October 12, 2005. At that meeting, Prinmar represented that the architect had to be Sarfatty, that CSI had to be "off the job" for Sarfatty to remain as architect and that Prinmar had met with the Village and that the Village was comfortable with Sarfatty remaining the architect. Prinmar further represented that it was taking over most of the duties previously assigned to CSI and that CSI would only be involved in "finish selection," although Prinmar would have final say on any finish. The fifth amended complaint alleged that at the same meeting, CSI stated that suppliers and subcontractors for the finishes on units had already been found, that CSI had already sent payment to some subcontractors and that Sarfatty's original architectural plans were deficient and had not been approved by the Village.

²The complaint alleges that Cummins worked for Prinmar while also alleging that certain actions were taken by both Cummins and Prinmar. While we are aware that Cummins is named in an individual capacity in this lawsuit, for simplicity we will use "Prinmar" when referring to actions allegedly taken by both Cummins and Prinmar.

According to the complaint, at this meeting CSI also stated that the building permit for the project had been obtained by the incorporation of CSI's plans into Sarfatty's modified designs, that CSI owned the drawings used to modify the plans, that CSI had interviewed several new architects who would be willing to work with Sarfatty's drawings, that CSI would be present at any meeting between Prinmar and the Village and that CSI would be paid pursuant to the contract for each unit sold.

¶ 12 The Hongs obtained the construction loan for the project from Amcore Bank in the fall of 2005. On November 18, 2005, the Hongs retained Prinmar as the general contractor for the project. Cummins was responsible for overseeing Prinmar's role as general contractor. At some point after November 18, 2005, and as a result of the misrepresentations made by Sarfatty and Prinmar, the Hongs breached their contract with CSI. The Hongs did so by ceasing their business relationship with CSI, by assigning work to Prinmar that was to be done by CSI, by failing to pay CSI for the work it had already done and by making payments to Sarfatty and Prinmar. On July 26, 2006, the Hongs transferred ownership and control of the project to DY Properties. After this transfer, the Hongs served as members of DY Properties. On November 2, 2009, DY Properties deeded the property on which the project was built to a Wisconsin company but it did not transfer the Hongs obligation to pay CSI for its prior services.

¶ 13 CSI's fifth amended complaint asserted the following claims against the Construction Defendants. Count III asserted a claim of tortious interference with contract. This count essentially alleged that CSI had a valid and enforceable contract with the Hongs pursuant to which CSI was to provide interior and exterior design work for the project and was to receive

various fees based upon CSI's time spent, projects completed and the units sold in the project. Count III further alleged that the Construction Defendants were aware of the terms of CSI's contract with the Hongs and that they "intentionally and unjustifiably induced" the Hongs to breach the contract by, among things, misrepresenting CSI's ability to perform its obligations under the contract and Prinmar's ability to perform those same obligations and by colluding to have the Hongs withhold payment to CSI and to have CSI removed as the interior designer on the project. As damages, CSI sought the fees it claimed it were owed under the contract and a certain percentage of the sale price of all condominiums that the Hongs sold.

¶ 14 Count IV asserted a claim against the Construction Defendants for tortious interference with a prospective economic advantage. Similar to Count III, Count IV alleged that the Construction Defendants induced the Hongs to cease all business relations with CSI and to retain Prinmar as the general contractor and Sarfatty as the architect on the project. Through their misrepresentations, the Construction Defendants further induced the Hongs to allow Prinmar to eliminate all subcontractors with which CSI had contracted for work on the project and to allow the Construction Defendants to remove CSI from all marketing material sent to potential purchasers of units in the project. Count IV further alleged that during a meeting, the Hongs expressed to CSI that they intended to renovate an office building on Pulaski street in the future and that they intended to utilize CSI's interior and exterior design services on that project. The termination of its relationship with the Hongs caused CSI to lose the opportunity to perform additional work on the project, future work on the Pulaski office building and additional design work for occupants of units within the project.

¶ 15 Count V of the fifth amended complaint asserted a claim against Prinmar and Cummins for a violation of the Consumer Fraud and Deceptive Business Practice Act (the Act) (815 ILCS 505/1 *et seq.* (West 2010)). This count is based on the same alleged misrepresentations that form the basis of CSI's claims in Counts III and IV. These include that during business meetings and transactions, Prinmar misrepresented their ability to perform work required by the project and falsely promised that Prinmar could obtain the interior finish products for the project at a lower cost than CSI. Prinmar also falsely stated that Sarfatty was unwilling to work with CSI and that the Hong's construction lender wanted Prinmar to be the general contractor on the project. Count V further alleged that Prinmar intended CSI to rely on their misrepresentations and not oppose the Hong's contracting with Prinmar to be the general contractor on the project. As a result of these acts, CSI lost business relationships with suppliers and subcontractors, did not receive compensation due under its contract with the Hong's. CSI also did not realize the opportunity to receive additional compensation due to material upgrades elected by purchasers of units or the opportunity to provide complimentary design services to occupants of units in the project and, as a result, CSI lost the prospect of making additional sales of its design services to purchasers of units in the project. Count V also alleged that as a result of Prinmar's conduct, the Hong's did not retain CSI to perform design work on the office building on Pulaski Street. Finally, Count V asserted that the alleged misrepresentations enabled Prinmar to obtain the general contractor position on the project and that, from that position, they influenced the Hong's to cease their business relationship with CSI.

¶ 16 Count VIII asserted a claim of civil conspiracy against Sarfatty, Cummins and Prinmar.

This count alleged that Sarfatty and Prinmar reached an agreement by which Sarfatty would assist Prinmar with obtaining the general contractor position for the project in return for which Prinmar would provide assistance to Sarfatty to help it retain the architect position. In furtherance of this agreement, Sarfatty and Prinmar did not inform the Hongs that Prinmar's bid was based on information that was not available to other bidders, that Sarfatty's recommendation that the Hongs retain Prinmar as general contractor was not based on the quality of Prinmar's bid but, rather, for Sarfatty's own benefit and that Prinmar had misrepresented to the Hongs that Sarfatty was the only viable architect.

¶ 17 Count IX of the fifth amended complaint asserted a claim of unjust enrichment against Sarfatty and Prinmar. Count IX claimed that Sarfatty altered its architectural plans based on "work product accomplished by" CSI, that Prinmar utilized CSI's work product in the construction of the project and that, although Sarfatty and Prinmar knew that CSI had not been compensated for its work, they received payment for design and construction work that benefitted from or incorporated CSI's work product. Count IX further alleged that Sarfatty and Prinmar knew that CSI had not been paid for its work and that CSI had a right under its contract with the Hongs to review and approve payments made to contractors and other suppliers, but that Sarfatty and Prinmar nevertheless accepted payment for their services and were thereby unjustly enriched.

¶ 18 The Construction Defendants filed motions to dismiss CSI's fifth amended complaint pursuant to sections 2-615 and 2-619 of the Code. The trial court struck Counts V (Consumer Fraud and Deceptive Business Practice Act), Count VIII (civil conspiracy) and Count IX (unjust

enrichment) with prejudice pursuant to section 2-615 of the Code.³ The court also struck CSI's tortious interference claims (Counts III and IV) without prejudice pursuant to section 2-615 and gave CSI the opportunity to replead those counts.

¶ 19 CSI filed a sixth amended complaint on January 18, 2012, in which it attempted to reassert its claims for tortious interference with a contract and tortious interference with a prospective business expectancy. CSI also reasserted the other counts that had been dismissed with prejudice from the fifth amended complaint for purposes of appellate review. The Construction Defendants moved to dismiss the sixth amended complaint pursuant to section 2-603 of the Code, arguing that it was "incomprehensible," "entirely undecipherable" and only "compounded[ed] the confusion that the amendment was supposed to address." Among other things, the Construction Defendants noted that the complaint purported to span 224 paragraphs but that paragraphs 1 through 199 were not contained in the complaint, that other "allegations" were attached as exhibits to the sixth amended complaint and that the allegations made in the complaint were "unintelligible."

¶ 20 The trial court granted the Construction Defendants' motion and struck the sixth amended complaint with prejudice pursuant to section 2-603 of the Code. The court also denied CSI's request to file a seventh amended complaint. This appeal followed.

³The trial court also dismissed Count VII of the fifth amended complaint (conversion against the Hong's, Sarfatty and Prinmar) as to Prinmar and Sarfatty with prejudice pursuant to section 2-615 of the Code. The court dismissed Count XI (defamation against Sarfatty) with prejudice pursuant to sections 2-615 and 2-619 of the Code. No appeal is taken from the dismissal of any of these counts.

¶ 21 CSI first contends that the trial court erred by dismissing its claims for civil conspiracy (Count VIII), unjust enrichment (Count IX) and violations of the Consumer Fraud and Deceptive Business Practice Act (Count V) pursuant to section 2-615 of the Code.⁴

¶ 22 "A motion to dismiss pursuant to section 2-615 attacks the legal sufficiency of the complaint. [Citation.] A court reviewing an order granting a section 2-615 motion takes all well-pled facts as true. [Citation.] On review of a section 2-615 dismissal, the court must determine whether the allegations of the complaint, when interpreted in the light most favorable to the plaintiff, sufficiently set forth a cause of action on which relief may be granted. [Citation.]" *The Town of Cicero v. Metropolitan Water Reclamation District of Greater Chicago*, 2012 IL App (1st) 112164, ¶ 15. We review a circuit court's dismissal of a complaint pursuant to section 2-615 *de novo*. *Id.* ¶ 16.

¶ 23 CSI first claims that Count VIII of the fifth amended complaint set forth a claim for civil conspiracy. This court has explained the allegations that are necessary to state a claim for civil conspiracy:

"In order to state a claim for civil conspiracy, a plaintiff must plead a combination of two or more persons who join together for the purpose of

⁴As to the counts dismissed from the fifth amended complaint, on appeal CSI contends that those counts adequately stated a cause of action. CSI does not raise the issue that even if those counts did not state a cause of action, CSI should have been allowed to replead them. Therefore, we do not discuss that issue. However, we note that the trial court has the authority to dismiss a complaint with prejudice pursuant to section 2-615 when it is "apparent that no set of facts can be proven that will entitle the plaintiff to recover." *Village of Roselle v. Commonwealth Edison Co.*, 368 Ill. App. 3d 1097, 1119 (2006).

accomplishing by concerted action either an unlawful purpose or a lawful purpose by unlawful means. [Citation.] Specifically, the necessary elements of a civil conspiracy include: (1) an agreement between two or more persons; (2) to participate in an unlawful act, or a lawful act in an unlawful manner; (3) an injury caused by an unlawful overt act performed by one of the parties; and (4) the overt act was done pursuant to and in furtherance of the common scheme. [Citation.]

The mere characterization of a combination of acts as a conspiracy is insufficient to withstand a motion to dismiss. [Citation.]" *Canel and Hale, LTD. v. Tobin*, 304 Ill. App. 3d 906, 920 (1999).

¶ 24 The essence of the agreement alleged in CSI's complaint is that Sarfatty and Prinmar agreed to work together so that the Hongks retained Sarfatty as the architect on the project and awarded Prinmar the general contractor position. The unlawful acts alleged to have been committed in furtherance of this agreement include Prinmar advocating for the Hongks to continue to retain Sarfatty as the architect after the Hongks asked CSI to identify possible architects to replace Sarfatty. This advocacy included Prinmar making the false statements to the Hongks that Sarfatty was the only "viable architect" for the project and that Prinmar could complete the work assigned to CSI at a lower cost. Further, Sarfatty allegedly aided Prinmar in obtaining the general contractor position by providing Prinmar with information regarding other bids that allowed Prinmar to lower its bid and secure the general contractor position. Sarfatty then allegedly did not inform the Hongks that Prinmar had lowered its bid based upon this information or that Sarfatty's recommendation that the Hongks retain Prinmar was made for Sarfatty's benefit

and was not based on the quality of Prinmar's bid.

¶ 25 We find that the allegations in CSI's complaint fail to state a cause of action for civil conspiracy against the Construction Defendants. The purpose of the alleged conspiracy was not unlawful. It was not tortious or unlawful for Prinmar and Sarfatty to agree to persuade the Hongs that they should be the architect and general contractor for the project or, as CSI characterizes the purpose of the agreement, in both parties "desir[ing] to work on the lucrative and prestigious five story building."

¶ 26 Moreover, the acts allegedly made in furtherance of the agreement were not unlawful. Sarfatty and Prinmar were free to express their opinions to the Hongs that they wanted to work together on the project and that they did not want to work with CSI. Similarly, it was not unlawful for Prinmar to tell the Hongs that Sarfatty was the only "viable architect" for the project and that Prinmar could complete the work assigned to CSI at a lower cost even if, as CSI claims, these statements turned out to be false. Finally, the fifth amended complaint identifies no statutory, contractual or common law duty that was violated when Sarfatty allegedly provided information to Prinmar about other bids that would render such conduct unlawful. This case involves a private construction project and not a public contract or development project to which certain bidding requirements might be imposed by statute. See, *e.g.*, 30 ILCS 500/1–1 *et seq.* (West 2010) (setting forth the Illinois Procurement Code and specifically the policy in Illinois that "the principles of competitive bidding and economical procurement practices shall be applicable to all purchases and contracts by or for any State agency" and the general requirement that "all State construction contracts shall be procured by competitive sealed bidding"). For these

reasons, we find that the fifth amended complaint failed to state a cause of action for civil conspiracy and was therefore properly dismissed.

¶ 27 We next consider the dismissal of Count V of the fifth amended complaint in which CSI purported to assert a claim against Prinmar and Cummins for violations of the Act. Count V was based on the alleged misrepresentations made by Prinmar at meetings in September and October of 2005 that were also attended by the Hongs and CSI. At this meeting, Prinmar allegedly represented to the Hongs that it could obtain the same product identified by CSI at a lower cost, that Cummins had extensive experience overseeing the construction of buildings similar to the project, that Sarfatty would no longer work with CSI and would only work with Prinmar. Prinmar also told the Hongs that it was qualified to perform the same design work for which the Hongs had contracted with CSI and that the Hongs' construction lender would only work with Prinmar. Finally, Prinmar allegedly misrepresented that Sarfatty was the only viable architect for the project and that CSI had to be removed from the project for Sarfatty to remain as the architect. Count V further alleged that these misrepresentations occurred during business meetings, that CSI did not discover these misrepresentations until it had been removed from the project and that, but for the misrepresentations, CSI would not have been removed from the project and would have been compensated for its work.

¶ 28 Section 2 of the Act states:

"Unfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or

omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact, *** in the conduct of any trade or commerce are hereby declared unlawful whether any person has in fact been misled, deceived or damaged thereby." 815 ILCS 505/2 (West 2010).

¶ 29 To adequately plead a cause of action under the Act, a plaintiff must allege: (1) a deceptive act or practice by the defendant, (2) the defendant's intent that the plaintiff rely on the deception, (3) the occurrence of the deception in the course of conduct involving trade or commerce, and (4) actual damage to the plaintiff (5) proximately caused by the deception.

Oliveira v. Amoco Oil Co., 201 Ill. 2d 134, 149 (2002). A complaint alleging a violation of consumer fraud must be pled with the same particularity and specificity as that required under common law fraud. *Connick v. Suzuki Motor Co., Ltd.*, 174 Ill. 2d 482, 501 (1997).

¶ 30 Although the protections of the Act are not limited to consumers, the Act "was not intended to cover all commercial transactions regardless of the relationship between the parties involved." *Lake County Grading Co. of Libertyville v. Advanced Mechanical Contractors, Inc.*, 275 Ill. App. 3d 452, 457 (1995). "Courts continue to adhere to the rule that '[e]very individual breach of contract between two parties does not amount to a cause of action under the Act.' " *Id.* at 459 (quoting *Law Offices of William J. Stogsdill v. Cragin Federal Bank for Savings*, 268 Ill. App. 3d 433, 437-38 (1995); *Brody v. Finch University of Health Sciences*, 298 Ill. App. 3d 146, 159 (1998) ("A breach of contract action, without more, is insufficient to sustain a cause of action cognizable under the [Act]"). "Indeed, if litigants could invoke the Act merely by alleging an intentional or fraudulent breach of a contract, common-law breach of contract actions would

be supplemented in every case with an additional and redundant remedy under the Act." *Lake County Grading*, 275 Ill. App. 3d at 459. The legislature did not intend the Act to apply to all commercial transactions or to supplement every action for breach of contract. *Id*; *Brody*, 298 Ill. App. 3d at 159. Therefore, "courts have consistently resisted attempts by litigants to portray otherwise ordinary breach of contract claims as causes of action under the Act." *Lake County Grading Co.*, 275 Ill. App. 3d at 459. Accordingly, where the dispute involves two businesses that are not consumers, the proper test to determine if the Act applies is whether " 'the alleged conduct involves trade practices addressed to the market generally or otherwise implicates consumer protection concerns.' " *Bank One Milwaukee v. Sanchez*, 336 Ill. App. 3d 319, 322 (2003) (quoting *Downers Grove Volkswagen Inc. v. Wigglesworth Imports, Inc.*, 190 Ill. App. 3d 524, 534 (1989); see also *Brody*, 298 Ill. App. 3d at 161 ("when a claim under the Consumer Fraud Act is premised upon a breach of contract, a party must allege some nexus between the complained-of conduct and consumer protection concerns").

¶ 31 We find that allegations in CSI's complaint fail to state a claim for a violation of the Act. First, there is no dispute that CSI is not a consumer and therefore the question is whether CSI has alleged a nexus between the Construction Defendants' alleged conduct and consumer protection concerns. Neither the Act nor its legislative history defines the parameters of the phrase "implicates consumer protection concerns." *Bank One Milwaukee*, 336 Ill. App. 3d at 324. Nevertheless, even under a liberal construction, we have no difficulty concluding that the Construction Defendants' alleged conduct does not implicate such concerns or otherwise fall within the scope of the Act. This case involves a garden-variety breach of contract claim. CSI's

essentially alleges that as a result of the Construction Defendants' misrepresentations, it lost its contract with the Hongs and was not paid for the work it performed on the project. There is no inherent consumer protection concerns implicated in such a claim and the complained-of conduct was not "addressed to the market directly." Instead, the conduct was directed to the Hongs and to CSI. Regardless of the parameters of the Act, this case stands in stark contrast to other cases involving conduct that fell within the scope of the Act. See, e.g., *Perona v. Volkswagon, of America, Inc.*, 292 Ill. App. 3d 59 (1997) (failure to disclose defects in vehicles); *Downers Grove Volkswagen*, 190 Ill. App. 3d at 534 (deceptive brochure distributed to 15,000 consumers).

¶ 32 We also find that CSI's claim was properly dismissed because of its failure to plead the necessary elements for a cause of action under the Act. To state a cause of action for a violation of the Act, a plaintiff must allege that the defendant intended the plaintiff to rely on the deceptive act. *Oliveira*, 201 Ill. 2d at 149. CSI's allegations, however, concern representations made to the Hongs, not to CSI, and the essence of CSI's complaint is that the Hongs relied upon those representations. CSI makes the conclusory allegation that "defendants intended that CSI would rely upon the representations *** and not oppose Hong contracting with Prinmar as the general contractor." This allegation is entirely conclusory and is not well-pled such that it is sufficient to withstand a 2-615 motion to dismiss. See, e.g., *Provenzale v. Forister*, 318 Ill. App. 3d 869, 878 (2001) (stating that a 2-615 motion to dismiss does not admit as true "conclusions of law or factual conclusions that are unsupported by allegations of specific facts"); *Lake County Grading*, 275 Ill. App. 3d at 460 (plaintiff's allegation that "at the time the parties contracted for the relocation of the sewer line defendant had no intention of paying plaintiff for the work" was

"conclusory" and "insufficient to transform what is otherwise a garden-variety breach of contract claim into a cause of action under the Act"). Here, there are no specific factual allegations that CSI, as an interior designer, would have been able to meaningfully oppose the Hong's choice of general contractor or that CSI's failure to so oppose Prinmar somehow caused CSI's injuries. Additionally, the type of "indirect deception" that CSI appears to be attempting to allege requires the allegation that a defendant intended its representations to ultimately reach the plaintiff and influence its action. See *DeBouse v. Bayer*, 235 Ill. 2d 544, 556 (2009). CSI makes no such factual allegations in its complaint. Finally, CSI has not pled facts regarding proximate cause to survive the motion to dismiss. CSI makes numerous conclusions in Count V that it lost advantageous business relationships but makes no specific factual assertions as to how the violation of the Act committed by the Construction Defendants proximately caused CSI's injuries. For these reasons, we find the trial court properly dismissed CSI's claim for a violation of the Act (Count V).

¶ 33 We next consider the dismissal of CSI's claim against Sarfatty and Prinmar for unjust enrichment. The essence of CSI's claim is that after Sarfatty prepared its initial architectural plans for the project, the Hongs asked CSI to prepare a "punch list" of potential problems in Sarfatty's design. CSI did so and provided that list to the Hongs. The Hongs then asked to prepare a comparison drawing of one unit in the project and subsequently asked CSI to redraw the remaining units in accordance with CSI's comparison drawing. CSI did so and gave those plans to the Hongs so that the Hongs could provide them to their banking lender in order to obtain financing. Sarfatty then incorporated CSI's revisions into its architectural plans and

Prinmar, as the general contractor, used Sarfatty's plans to construct the project. Sarfatty and Prinmar then accepted payment from the Hongs for their services despite being aware that the CSI plans were the property of CSI and that CSI had not been compensated for its work in preparing those plans.

¶ 34 To state a claim for unjust enrichment, a plaintiff must allege that the defendant has unjustly retained a benefit to the plaintiff's detriment, and that defendant's retention of the benefit violates the fundamental principles of justice, equity, and good conscience. *Gagnon v. Schickel*, 2012 IL App (1st) 120645, ¶ 25. In situations in which the plaintiff is seeking recovery of a benefit that was transferred to the defendant by a third party, courts have found that retention of the benefit would be unjust where (1) the benefit should have been given to the plaintiff, but the third party mistakenly gave it to the defendant instead; (2) the defendant procured the benefit from the third party through some type of wrongful conduct; or (3) the plaintiff for some other reason had a better claim to the benefit than the defendant. *HPI Health Care v. Mt. Vernon Hospital*, 131 Ill. 2d 145, 161 (1989).

¶ 35 In this case, CSI did not allege that the Hongs intended to pay CSI but instead mistakenly paid Sarfatty and Prinmar or that CSI's claim to payment was superior to that of Sarfatty and Prinmar. This is unsurprising given that CSI, Sarfatty and Prinmar all performed different roles on the project. Sarfatty provided architectural services, CSI provided interior design services and Prinmar was the general contractor.

¶ 36 Therefore, the question is whether CSI set out specific factual allegations which would support the conclusion that the Sarfatty's and Prinmar's conduct in procuring the payments from

the Hong's was wrongful. We find that they did not. Sarfatty and Prinmar were compensated for the services they provided to the Hong's. As the architect, Sarfatty was paid for the architectural services it provided pursuant to its contract with the Hong's and Prinmar was paid for constructing the project pursuant to its contract with the Hong's. The fact that the Hong's allegedly asked CSI to redraw some of the plans and then failed to pay CSI for its contributions does not establish that Sarfatty and Prinmar were unjustly enriched. CSI's real complaint is that the Hong's breached their contract with CSI when they did not pay CSI for its contributions to the plans and that alleged breach is irrelevant to a claim for unjust enrichment. Similarly unavailing is CSI's claim that Sarfatty and Prinmar were unjustly enriched by accepting payment from the Hong's despite knowing that CSI's contract with the Hong's prohibited the Hong's from making payment to any contractors or provider of services without CSI's approval. Again, Sarfatty and Prinmar were paid for the work they performed pursuant to their contract with the Hong's and there is no allegation that Sarfatty's and Prinmar's contracts with the Hong's included a provision conditioning their payment on CSI's approval. Thus, as stated above, whether the Hong's breached their contract with CSI by paying Sarfatty and Prinmar without CSI's approval is irrelevant to a claim that Sarfatty and Prinmar were unjustly enriched. Accordingly, we find that CSI's claim for unjust enrichment (Count IX) was properly dismissed.

¶ 37 CSI next contends that the trial court erred by dismissing its sixth amended complaint pursuant to section 2-603 of the Code.

¶ 38 Section 2-603 states:

"Form of pleadings. (a) All pleadings shall contain a plain and concise

statement of the pleader's cause of action, counterclaim, defense, or reply.

(b) Each separate cause of action upon which a separate recovery might be had shall be stated in a separate count or counterclaim, as the case may be and each count, counterclaim, defense or reply, shall be separately pleaded, designated and numbered, and each shall be divided into paragraphs numbered consecutively, each paragraph containing, as nearly as may be, a separate allegation.

(c) Pleadings shall be liberally construed with a view to doing substantial justice between the parties. " 735 ILCS 5/2-603 (West 2010).

The failure to comply with section 2-603 can be grounds for the dismissal of the complaint.

Cable America, Inc. v. Pace Electronics, Inc., 396 Ill. App. 3d 15, 19 (2009).

¶ 39 We have reviewed the sixth amended complaint in its entirety. We agree that the complaint is far too long, verbose and cumbersome in structure and needs to be rewritten. It does not contain a plain and concise statement as to the causes of action set forth therein and therefore violates section 2-603 of the Code.

¶ 40 However, the Construction Defendants had never raised dismissal under section 2-603 prior to filing their motion to dismiss the sixth amended complaint. In that respect, this case is different from cases such as *Cable America*, cited by the Construction Defendants, and is similar to *Hartshorn v. State Farm Insurance Co.*, 361 Ill. App. 3d 731 (2005). In *Hartshorn*, this court found that the trial court properly dismissed the plaintiff's complaint for failure to comply with section 2-603 because separate causes of action against different defendants were "mixed together." *Id.* at 735. However, this court reversed the portion of the dismissal that was "with

prejudice" because the circuit court did not give the plaintiffs multiple opportunities to amend their complaint and because the "deficiencies could be easily cured." *Id.* at 733.

¶ 41 In *Cable America*, 396 Ill. App. 3d at 22, this court affirmed the dismissal with prejudice of the plaintiff's fifth amended complaint pursuant to section 2-603 of the Code because it did not contain a plain and concise statement of plaintiff's cause of action and because the allegations in the complaint suggested multiple causes of action that were not identified and segregated. This court noted that the circumstances of the case differed "drastically" from those in *Hartshorn*. *Id.* We noted that the plaintiff was "put on notice that its third and fourth amended complaints failed to comply with section 2-603," that "[i]n dismissing the fourth amended complaint with leave to refile, the circuit court directed the plaintiff to comply with section 2-603(b) by specifying the type of cause of action at issue in its fifth amended complaint or face dismissal with prejudice" and that "[i]n spite of the court's patient direction, the plaintiff failed yet again to comply with section 2-603." *Id.* We observed that this was a direct violation of the court's order and that the plaintiff's "repeated disregard" of the court's orders justified dismissal with prejudice. *Id.* at 23-24.

¶ 42 In this case, as noted, the Construction Defendant's raised dismissal pursuant to section 2-603 for the first time in their motion to dismiss CSI's sixth amended complaint and the court granted the motion and dismissed the complaint with prejudice. Therefore, while we agree that the sixth amended complaint was properly dismissed, that dismissal should not have been with prejudice. Instead, CSI should have the opportunity to replead its tortious interference claims in a seventh amended complaint. That complaint should be streamlined from its prior version and

the factual assertions that form its basis as well as the legal claims asserted therein should be presented in a concise manner.

¶ 43 Therefore, we reverse the judgment of the circuit court of Cook County striking CSI's sixth amended complaint with regard to Counts XX and XXI, alleging tortious interference with a contract and tortious interference with a prospective business expectancy. We affirm the trial court's dismissal of Count V (violation of the Act), Count VIII (civil conspiracy) and Count IV (unjust enrichment) of CSI's fifth amended complaint and as realleged in the sixth amended complaint.

¶ 44 Affirmed in part and reversed in part; cause remanded.